

# **Commerce and Energy Committee**

Senator Al Melvin, Chairman



**Jennifer Thomsen, Research Analyst**

**Fareed Bailey, Assistant Analyst**

**Samantha Macchiaroli, Intern**

# COMMERCE AND ENERGY COMMITTEE

## LEGISLATION ENACTED

child welfare agency; technical correction (NOW: peace officers; licensure; registration; prohibited) (S.B. 1020) – Chapter 222

SEE THE PUBLIC SAFETY AND HUMAN SERVICES COMMITTEE.

tobacco products; prohibition (S.B. 1086) – Chapter 340

Prohibits minors from using false identification to obtain tobacco products and stipulates that a violation is a petty offense with a fine up to \$500.

civil appeal bonds; limits (S.B. 1212) – Chapter 99

Limits the amount of a bond that is necessary to stay execution during an appeal or discretionary review of a judgment in a civil action by an appellate court (a *supersedeas* bond). Limits the bond amount to whichever is less: a) the total amount of damages awarded, excluding punitive damages; b) 50 percent of the appellant's net worth; or c) \$25 million. If the appellee proves that the appellant is intentionally dissipating assets outside the ordinary course of business in order to avoid paying the judgment, then the court may require the appellant to post a bond in an amount up to the full judgment. The bond amount may be lowered if the appellant proves that he or she is likely to suffer substantial economic harm if required to post the bond. Specifies that the provisions related to *supersedeas* bonds apply to all actions that are pending or filed on or after the general effective date.

Limits all interest on judgments to whichever amount is less: a) 10 percent per year; or b) an amount that is equal to 3 percent plus the prime rate as published by the Board of Governors of the Federal Reserve System. Prohibits a court from awarding any prejudgment interest or any unliquidated, future, punitive or exemplary damages that are found by the trier of fact. Also prohibits a court from awarding interest for any future, punitive or exemplary damages that are found by the trier of fact.

Lowens the medical malpractice interest rate from three to one percentage point above the federal post-judgment interest rate. Specifies that the collection of interest on enforcement of a juvenile restitution order or a criminal restitution order accrues at a rate of 10 percent per year.

business services; secretary of state (S.B. 1230) – Chapter 343

Makes various changes to different services and programs within the office of the Secretary of State (SOS).

Specifies that notaries perform notarial acts only if certain requirements are met. Provides a training requirement for suspended notaries and outlines standards for notarial certificates that are attached to documents. Prohibits notaries from advertising a fee that is more than what is currently charged. These provisions also apply to electronic notaries. Authorizes the SOS to require electronic notaries to attend a training course and assess a fee for administering the training course.

Allows a trade name to be released six months after the trade name's corporate owner has been administratively dissolved and allows a single application for a trademark for multiple classes. Repeals statute that regulated performing rights societies, removes a filing requirement for certain health spas and delays the time Professional Employer Organization rules must be implemented.

Beginning July 1, 2012, increases the percent of total annual revenues from the sale of special instant games that are deposited into the State Lottery Fund from 15 to 35 percent.

boxing commission; continuation (S.B. 1276) – Chapter 70

Retroactive to July 1, 2011, the Arizona State Boxing and Mixed Martial Arts Commission is continued until July 1, 2016.

disclosure; collect call rates (S.B. 1337) – Chapter 164

Requires operator service providers accessed from an Arizona jail, prison or correctional facility to disclose the collect call rate to the party responsible for payment.

employer protections; labor relations (S.B. 1363) – Chapter 153

Establishes that it is unlawful for a labor organization to engage in picketing if the purpose is to coerce or induce an employer or self-employed person to join or contribute to a labor organization. Prohibits a labor organization from engaging in trespassory assembly and a person from preventing lawful work through mass assembly.

Stipulates that a person commits defamation of an employer by: a) maliciously making a false statement about the employer to a third party without privilege; b) knowingly, recklessly or negligently disregarding the falsity of the statement; and c) causing damage to the employer by the false statement. Establishes penalties for committing defamation of an employer.

Creates a no trespass public notice list (list), which identifies employers who have established private property rights to their establishment and any related real property in the state. Requires the Secretary of State (SOS) to maintain a copy of the documents for public inspection and requires the list to be published in a newspaper, on the SOS's website and to be provided to every law enforcement agency in the state. Requires law enforcement agencies to maintain the most recent list and allows peace officers to respond to complaints of unlawful picketing, trespassory assembly or unlawful mass assembly at those addresses.

Establishes that unlawful picketing, trespassory assembly, unlawful mass assembly, and concerted interference with lawful exercise of business activity are illegal. Entitles a person against whom any of the activities is directed or who is injured by the activities to injunctive relief. Stipulates that persons calling or conducting the acts are liable for damages. Establishes that a person who unlawfully pickets, trespasses or participates in an unlawful mass assembly is guilty of a class 2 misdemeanor and is required to pay a fine of at least \$200. If the person does those activities on a property listed on the no trespass public notice list, he or she is guilty of a class 1 misdemeanor and is also required to pay a fine of at least \$200.

Permits a court to issue a temporary restraining order or injunction for actions involving labor disputes and prohibits an employer from withholding wages past the date specified by an employee in a written revocation of authorization, unless a court so orders.

~~certificates; line-siting committee.~~ (NOW: mandatory project labor agreements; prohibitions) (S.B. 1403) – Chapter 23

Prohibits agencies, political subdivisions and the Arizona Corporation Commission from requiring a contractor to become a party to any project labor agreement as a condition to be considered for a public works project.

professional licensure; out-of-state applicants (S.B. 1458) – Chapter 240

Requires professional licenses or certificates (licenses) be issued to a spouse (applicant) of an active duty member of the U.S. Armed Forces if the applicant meets certain criteria. The criteria includes but is not limited to: a) the applicant must be currently licensed in another state and have held the license for at least a year, b) the other state must have equal or greater licensure standards, c) the applicant must have previously passed an examination and d) the applicant must not have had a license revoked, surrendered or had disciplinary action or a complaint against him or her. Requires the applicant to pay all applicable fees for the Arizona license.

landlord; tenant; fit and habitable (S.B. 1474) – Chapter 241

Specifies that a tenant may not make repairs to a premises at a landlord's expense if the condition repaired does not constitute a breach of the fit and habitable condition of that premises. A tenant must promptly notify a landlord in writing of any instance in which the landlord has maintenance responsibility.

store display shelf pricing (S.B. 1535) – Chapter 252

Removes language that specified price tag typeface and size regulations and the physical price tag and shelving orientation requirements for retail displays.

~~regulation; 2011-2012; budget reconciliation~~ (NOW: budget reconciliation; regulation; 2011-2012) (S.B. 1623) – Chapter 35

SEE THE APPROPRIATIONS COMMITTEE.

office of tourism; continuation (H.B. 2078) – Chapter 212

Retroactive to July 1, 2011, continues the Arizona Office of Tourism until July 1, 2016.

dogs; cats; sterilization (H.B. 2137) – Chapter 213

Broadens surgical spaying or neutering standards for the release of cats or dogs from a pound or shelter to include other sterilization procedures. Outlines responsibilities and penalties for the owner of an aggressive dog.

prearranged funeral agreements (H.B. 2160) – Chapter 256

Requires fixed price prearranged funeral trust funds to be deposited within 21 calendar or 15 business days, whichever is shorter.

bulk merchandise containers; records (H.B. 2168) – Chapter 109

Provides regulations for a person in the business of recycling, shredding, reselling or destroying bulk merchandise containers (purchaser). Prohibits a purchaser from: a) purchasing five or more plastic containers at a time containing a company name or logo; and b) purchasing 10 or more wood containers at a time without obtaining a record and verifying the identification of the person selling the containers. Establishes penalties for the unlawful purchase of bulk merchandise containers.

state lottery; transfer (H.B. 2192) – Chapter 14

Conforms statute relating to the reauthorization of the Arizona State Lottery and the Arizona State Lottery Commission (Commission) as directed by Laws 2010, Sixth Special Session, Chapter 2. Repeals the rulemaking and procurement code exemption for the Commission as provided by the 2010 Special Session law.

transportation contracts; indemnity agreements; void (H.B. 2359) – Chapter 54

Prohibits shippers and motor carriers who transport shipper property in vehicles weighing more than 10,000 pounds from agreeing to transportation services contract provisions that indemnify, defend or hold either party harmless from liability claims for self-committed negligence, intentional acts and omissions.

~~technical correction; mobile home parks~~ (NOW: mobile home parks; designation; change) (H.B. 2395) – Chapter 283

Requires the landlord of an age restricted community to notify the Director of the Arizona Department of Fire, Building and Life Safety and all tenants of a change in use to an all age community at least 60 days before such a change occurs. Requires the landlord, in the event of such a change, to provide written notice of applicable tenant relocation laws to all affected tenants. Allows eligible age restricted mobile home community tenants to apply for and receive payment for relocation expenses from the Mobile Home Relocation Fund, and outlines the eligibility criteria and application procedures for doing so.

county infill; renewable energy districts (H.B. 2458) – Chapter 335

Eliminates the following requirements for a county board of supervisors (BOS) regarding the formation of infill incentive districts and renewable energy incentive districts in unincorporated areas of a county: a) that a weekly notice of the proposed district be published in a newspaper of general circulation within the county for two weeks; b) that at least one public hearing be held in a county supervisorial district in which the proposed district is located; and c) that the proposed district be established by BOS resolution after a public hearing.

cosmetologist licenses; board powers; duties (H.B. 2468) – Chapter 199

Modifies duties of the Arizona Board of Cosmetology (Board). Eliminates two year term limits for Board members and allows the Board to delegate authority to its Executive Director to issue licenses to applicants. Modifies reciprocity license requirements by requiring the applicant to take and complete a class relating to infection protection and a class relating to law review, as well as requiring the applicant to pay fees for the classes. Eliminates certain notification requirements and

provides clarifying language relating to salons or schools that change the name of a licensee, location or trade name. Prohibits an unlicensed person from using the title *aesthetician*, *cosmetologist* or *nail technician* in any advertisement, statement or publication.

professional boards; actions; public access (H.B. 2520) – Chapter 118

Clarifies that dismissed complaint records and board-issued nondisciplinary order or action records of health and nonhealth regulatory boards are to be available to a board and the public at all times during board office hours. Authorizes board-issued practice limitations, restrictions and related documentation to be posted on a board's website. Eliminates the requirement that advisory letters, letters of concern and practice limitations be available to a board and the public at all times and be posted on a board's website.

~~technical correction; wage board; powers~~ (NOW: employee drug testing; medical marijuana) (H.B. 2541) – Chapter 336 RFEIR

Retroactive to April 13, 2011, allows an employer to take action against an employee based on the good faith belief that: a) the employee used or possessed any drug while on the employer's premises or during the hours of employment; or b) the employee had an impairment while working on the employer's premises or during the hours of employment. Allows an employer to exclude an employee from performing a safety-sensitive position based on the good faith belief that an employee is engaged in the current use of a drug, whether legal, prescribed by a physician or otherwise, if the drug could cause an impairment or decrease the employee's job performance or duties.

Outlines the following as actions that are allowed by an employer and protected from litigation: a) implementing, monitoring or measures to assess, supervise or control the job performance of the employee; b) reassignment of an employee to a different position or job duties; or c) suspension or termination of employment.

Allows an employer to use the medical marijuana registry verification system in order to verify a registry identification card that is provided to the employer by a current employee or by an applicant who has received a conditional offer of employment.

~~fund transfer; Arizona historical society~~ (NOW: unemployment; special assessment) (H.B. 2619) – Chapter 218

SEE THE FINANCE COMMITTEE.

### **LEGISLATION VETOED**

~~technical correction; conservation easements; applicability~~ (NOW: Arizona quality jobs incentives) (S.B. 1041) – VETOED

Assesses business-owned property and real property improvements that are constructed or undergo a major renovation as class 6 property for 10 years. Stipulates that the construction or renovation must take place between January 1, 2012 and June 30, 2017. The business must be certified by the Arizona Commerce Authority.

The Governor indicates in her veto message that the tax policy contained in S.B. 1041 lacks clarity and creates several points of concern. The Governor states that these concerns include its

potential to negatively impact local government revenue streams and property taxpayers, favor new businesses and create a new bureaucracy.

~~TNT; rate computation; constant rate~~ (NOW: Arizona centennial statehood day) (H.B. 2700) – VETOED

Declares February 14, 2012, and each sequential centenary, Arizona Centennial Statehood Day as a holiday.

The Governor indicates in her veto message that, as an eleventh paid holiday for state employees, shutting down a large portion of state government for celebrations while the rest of the state is open sends the wrong message to Arizona taxpayers. The Governor states that Arizona Centennial Statehood Day should be celebrated while simultaneously serving the public with open offices.

## **SECOND SPECIAL SESSION**

### **LEGISLATION ENACTED**

Arizona commerce authority; business incentives. (H.B. 2001/S.B. 1001) – Chapter 1 (Second Special Session)

Establishes the Arizona Commerce Authority (ACA) and modifies provisions related to individual, corporate and property taxes.

#### ***Arizona Commerce Authority***

Replaces the Arizona Department of Commerce (ADOC) with the ACA. Outlines powers and duties of the ACA, as well as specifies the ACA Board of Directors (Board) membership. Prescribes that the mission of the ACA is to provide private sector leadership in growing and diversifying the economy of Arizona, creating high quality employment through expansion, attraction and retention of business and marketing Arizona for those purposes. Requires the Board to employ a chief executive officer (CEO), who is responsible for managing, administering and supervising the activities of the ACA.

Transfers various programs from ADOC and the Commerce and Economic Development Commission (CEDC) to the ACA or the Governor's Energy Office. Establishes the Rural Business Development Advisory Council.

Terminates the ACA on July 1, 2016.

#### ***Arizona Quality Jobs Incentives***

Specifies that to qualify in the first taxable year, the owner shall either: a) invest at least \$5 million of capital investment and create at least 25 new qualified employment positions within the exterior boundaries of a city or town that has a population of 50,000 or more in a county that has a population of 800,000 or more; or b) invest at least \$1 million of capital investment and create at least five qualified employment positions in any other location.

Defines *qualified employment position* as a position consisting of at least 1,750 hours per year of full-time permanent employment, job duties are performed primarily at the location of the business, employment provides health insurance for the employee for which the employer pays at least 65 percent of the premium or membership, and the employer pays compensation at least equal to the median wage by county as computed annually by the authority.

Limits qualification for the first year tax credit to no more than 400 new jobs per employer, and no more than 10,000 new jobs for all employers.

### ***Arizona Competes***

Replaces the Commerce and Economic Development Commission Fund with the Arizona Competes Fund (ACF).

Defines an *Arizona basic enterprise* as one that is located or principally based in this state and is primarily engaged in one or more of the Arizona basic industries, or alternatively, the national or regional corporate headquarters of an Arizona basic industry. Defines the industries included and excluded in *Arizona basic industry*.

Defines *new job* as full-time employment in a new or expanding Arizona basic enterprise that pays an average annual wage equal to at least 100 percent of the median wage by county as determined annually by the ACA, and includes health insurance for employees for which the employer pays at least 65 percent of the premium or membership cost.

Allows the CEO to negotiate the award of monies, by grant, from the ACF to Arizona basic enterprises, for the following purposes: a) attracting, expanding or retaining Arizona basic enterprises that achieve performance and qualification targets and that enter into an agreement with the CEO; b) supporting and advancing programs and projects for rural businesses, small businesses and business innovations that enhance economic development.

### ***Funding***

***State Lottery Fund (effective July 1, 2012)*** – Requires that \$3.5 million be annually deposited in the ACF from the State Lottery Fund. Replaces the distribution to the CEDC Fund. These monies are used for grants from Arizona Competes.

***Job Creation Withholding Clearing Account*** – Receives \$31.5 million of withholding tax revenue for distribution to other funds.

***Arizona Commerce Authority Fund (ACAF)*** – Establishes the ACAF consisting of withholding taxes in the amount of \$10 million annually allocated to the ACAF from the Job Creation Withholdings Clearing Account.

***ACF*** – Consists of withholding tax revenue allocated to the ACF from the job creation withholdings clearing account (\$21.5 million) and other amounts dedicated by law (\$3.5 million from Lottery).



### ***Capital Investment Incentives***

Extends tax credits for capital investment incentives to June 30, 2016, rather than June 30, 2011, and requires the ACA to provide a list of excluded businesses to any person on request.

Expands eligibility for capital investment incentives evaluated by the ACA, but limits qualification for capital investment incentives to a business with \$10 million in total assets beginning in 2012, rather than \$2 million before that date, and to counties with a population of 750,000, rather than 400,000 persons.

### ***Tax Provisions***

Replaces the gross domestic product (GDP) price deflator with the employment cost index for purposes of calculating the maximum amount of the annual increase for exempt personal property. Defines *employment cost index*.

Specifies that only a homeowner's primary residence can be classified as class 3 property and therefore eligible for the homeowner's rebate.

Requires a county assessor, in each even numbered year beginning in 2012, to include with each notice of full cash value sent to owners of class 3 property an affidavit on which the owner must declare, on penalty of perjury, whether the property is the owner's primary residence in the current valuation year.

Requires the county assessor to reclassify the property as class 4 property and notify the owner within 15 days if the owner indicates the property is not the owner's primary residence or the owner indicates on more than one affidavit that more than one parcel is the owner's primary residence.

Requires the Legislature to reimburse by appropriation the costs incurred in 2012 by county assessors in reclassifying residential property.

Adjusts the depreciation schedule for class 1 and 2 personal property over a six-year period.

Reduces the assessed valuation rate of class 1 property to 18 percent by 2016 (currently 20 percent), and reduces the assessed valuation rate for class 2 (agricultural) real and personal property from 16 percent to 15 percent beginning in TY 2016.

Allows a corporation to subtract from Arizona gross income the amount of any net capital gain included in federal adjusted gross income derived from investment in a qualified small business.

Limits the individual and corporate credit for new employment to \$3,000 for each full-time employee hired for the full taxable year in a qualified employment position in each of the first three years of employment, but not more than 400 employees in any taxable year.

Limits a taxpayer to claim either the credit for employment by a qualified defense contractor, credit for employment in a military reuse zone, credit for a renewable energy industry or the credit for new employment.

Allows carry forward of the tax credit for a period not exceeding five taxable years

Allows an additional credit amount for increased research activities for individuals and corporations equal to 10 percent of basic research payments to a university under the jurisdiction of the Arizona Board of Regents.

Reduces the corporate income tax rate to the greater of \$50 or 6.5 percent of net income for TY 2014 decreasing to 4.9 percent of net income for TY 2017 and thereafter.

Increases the electable sales factor for multi-state corporations currently at 80 percent to 85 percent for TY 2014, increasing to 100 percent for TY 2017 and thereafter.

Provides an effective date of July 1, 2011, except as otherwise noted.